DETAILED ACTION

This Office Action is in response to Applicant's amendment filed 10 September 2009.

Response to Arguments

Applicant's arguments filed 10 September 2009 have been fully considered but they are not persuasive.

Applicant argues that Howe is not concerned with sampling biological material. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding Applicant's argument that the sampling device of Howe is not removed via attachment to an applicator tool, this argument is not persuasive because Applicant is not claiming the applicator tool as part of the invention. The Howe device is capable of being used with an applicator tool that can remove the sampling device.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 12-19 rejected under 35 U.S.C. 102(b) as anticipated by Howe et al. (US Patent 4,694,781).

Claim 12: Howe'781 discloses a device that contains a male tag component (16, 17) with a punch (18) that is capable of penetrating an animal's ear and penetrating into a hollow head (12) of a female tag component (10). The female tag component (10) contains a sampling device (33) that is capable of sampling biological material from the ear of the animal. The sampling device extends outwardly from element 12 of the female tag component. The sampling device is separable from the female tag component (see Figure 5). The sampling device also contains an attachment (29) that can be used to attach to an applicator tool.

Claim 13: Howe'781 discloses that the sampling device (33) is an absorbent material. The absorbent material is perpendicular to the male punch because it extends radially from the hollow head (12) (see Figure 7).

Claim 14, 15, 16: The absorbent material (33) is capable of serving as a sampling strip. One end is fixed to the attachment (bottom portion placed within attachment 29; see Figure 7) while the other end is perpendicular to the direction of the punch through the animals ear (top end extends radially from the punch (see Figure 7) attached to the hollow head (12, 13) (Figure 7).

Claim 17: The attachment (29) and sampling device (33) are located over an opening in the hollow head (12) of the female tag component (Figure 7).

Claim 18: The attachment (29) is fixed to the periphery of the hollow head (12) (see Figure 7).

Claim 19: The attachment and sampling device are located over an opening of the hollow head (see Figure 17).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howe'781, as applied to Claim 12, in view of Brem (US Patent 6,509,187).

Claim 20: The male component contains a panel (16) and the female component contains a panel (10). Both components are capable of being marked with identical symbols. Howe'781 does not teach marking all the components with a symbol/lable.

Brem'187 teaches a device for tagging an animal and collecting a sample that contains a male tag component (10), a female tag component (11) and a sample collection element (Figure 1) attached to a tongue (9). Brem'187 teaches that all three components can be labeled with a symbol for the purpose of identifying which animal the tag corresponds (column 3, lines 15-26). It would have been obvious to one of ordinary skill in the art to modify the device of Howe'781 with the teachings of Brem'187 so that it too has this advantage.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY BACHMAN whose telephone number is (571)272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. B./
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734